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January 31, 1997

Via Hand Delivery

Mr. Donald Gips
Chief, International Bureau
Federal Communications Commission
Room No. 858
2000 M Street, N.W.
Washington, D.C. 20554

Re: Correction of Misstatements Contained in Other Parties' Reply Comments; IB Docket No. 96-220

Dear Mr. Gips:

Orbital Communications Corporation ("ORBCOMM") briefly writes in order to ensure that the record in this rulemaking proceeding is accurate. Two of the other parties submitting reply comments made statements that are wrong or misleading, and the public interest would not be well served if the Commission adopted policies based on such faulty information. ORBCOMM thus requests that this submission be included in the record in this non-restricted rulemaking proceeding.

Leo One USA Corporation ("Leo One"), in its reply comments submitted on January 13, 1997, presented several factual assertions that are not correct.[1] First, Leo One purported to

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[1] ORBCOMM also observes that Leo One's pleading apparently was not signed by its counsel, but rather was signed by somebody else on his behalf as reflected by the difference from previous signatures and the additional initials or marks next to the signature on the Reply Comments. Such a failure of Leo One's counsel to sign in his own name is a violation of Section 1.52 of the Commission's Rules, 47 C.F.R. § 1.52. That provision requires that:

The originals of all petitions, motions, pleadings,

(continued...)

calculate the ORBCOMM satellite system availability and characterize it as providing less than 80% availability.[2/] Leo One's calculations apparently used incorrect assumptions as to the parameters for ORBCOMM's system, and hence do not accurately portray the availability of ORBCOMM's satellite system.[3/] Attached to this letter is the correct availability figures as reflected in a chart presenting availability (defined as at least one satellite in view 5 degrees above the horizon). As those results demonstrate, ORBCOMM's system will be available on average to a subscriber in CONUS approximately 95 plus percent of time, with many areas of the country being higher.[4/]

Leo One also mischaracterizes ORBCOMM's constellation as consisting of 28 satellites, referencing a non-public Offering Memorandum (excerpts of which were attached to its pleading).[5/] In support of its claim, Leo One cites to the first page of the

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[1/](...continued)
briefs and other documents filed by any party represented by counsel shall be signed by at least one attorney of record in his individual name, whose address shall be stated. . . . The signature or electronic reproduction thereof by an attorney constitutes a certificate by him that he has read the document, that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If the original of a document is not signed or is signed with intent to defeat the purpose of this section, or an electronic reproduction does not contain a facsimile signature, it may be stricken as sham and false, and the matter may proceed as though the document had not been filed.

[2/] Leo One Reply Comments at n. 13 and Appendix B.

[3/] For example, Leo One's calculations used a 10 or 15 degree mask, asserting insufficient service links at mask angles less than 10 degrees. Leo One Reply Comments, Appendix B at p. 7. ORBCOMM believes, in contrast, that its use of a 5 degree mask in calculating availability is more accurate since it is supported by actual experience with ORBCOMM's operational LEO satellites.

[4/] See Attached Chart. As both ORBCOMM's and Leo One's calculations reflect, system availability will be a function of the latitude at which the subscriber is located.

[5/] E.g., Leo One Reply Comments at p. 17, citing the Offering Memorandum at p. 1.

summary of that document, ignoring the italicized language at the top of the page indicating that "*The following summary is qualified in its entirety by, and should be read in conjunction with, the more detailed information ... appearing elsewhere in this Offering Memorandum.*" Indeed, elsewhere in the Offering Memorandum ORBCOMM's deployment plans for its satellite system are described in greater detail. ORBCOMM has purchased 36 satellites, eight of which will initially be used as ground spares in the event of a launch or in-orbit failure to ensure that ORBCOMM's constellation will consist of at least 28 operational satellites. As the Offering Memorandum also states:

> In the event such satellites are not needed for such purpose, ORBCOMM currently intends to launch these satellites as an additional plane of eight, as authorized by the FCC License.[6/]

ORBCOMM has signed a contract to launch 28 satellites, and also has a firm, fixed option to launch the other eight, but initially will place those eight satellites in the role of ground spares. In sum, ORBCOMM still intends to launch 36 satellites, and in fact is seeking in this second processing round access to additional spectrum to support an additional 12 satellites so as to deploy a 48 satellite constellation. ORBCOMM has no intention of warehousing the spectrum, notwithstanding Leo One's unsupported speculation to the contrary.[7/]

ORBCOMM also objects to Leo One's attempts to mischaracterize ORBCOMM's earlier statements regarding its ability to share subscriber uplinks as reflected in Leo One's attempts to dismiss ORBCOMM's concerns regarding the NPRM's proposals to put several additional NVNG satellite system uplinks in the upper half of the 148-149.9 MHz band.[8/] In its initial comments in this proceeding, ORBCOMM expressed some doubts as to the ability of all of the systems to operate their subscriber uplinks (along with feeder links) effectively in just the upper portion of the 148-149.9 MHz band.[9/] ORBCOMM also submitted representative samples demonstrating that during certain periods, the number of unoccupied channels in the 148-149.9 MHz band drops

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[6/] ORBCOMM Offering Memorandum, Leo One Reply Comments Appendix A at pp. 47-48.

[7/] Leo One Reply Comments at p. 17.

[8/] Leo One Reply Comments at pp. 37-38.

[9/] ORBCOMM Comments at pp. 41-43.

dramatically. This problem will be more acute to the extent that the subscriber uplinks are only permitted in the upper half of the band.

ORBCOMM's comments in this proceeding do not conflict with its previous statements that sharing of the subscriber uplinks using DCAAS techniques should be possible through careful coordination. Rather, ORBCOMM's comments in this proceeding present evidence of potential problems during peak periods, along with two potential solutions -- use of the entire 148-149.9 MHz band (assuming compatibility with Starsys' operations in that portion of the band) and/or use of the spectrum allocated at WRC-95. ORBCOMM continues to believe that the Commission should consider these alternatives.[10/]

Finally, ORBCOMM also finds it necessary to correct a mischaracterization of ORBCOMM's position that was included in the Reply Comments of the Affiliated American Railroads ("AAR"). In an effort to denigrate the demand for NVNG satellite services, AAR included a quote from ORBCOMM's Comments, stating in its Reply Comments that:

> Importantly, Orbcomm notes that any attempt to forecast demand for Little LEO services at this time "would be strictly a hypothetical exercise driven solely by projections or assumptions, and consequently of little real value."[11/]

While AAR did accurately quote a portion of a sentence in ORBCOMM's Comments, ORBCOMM was not criticizing the demand studies submitted by the Little LEO proponents used to justify the need for additional spectrum as AAR suggests. Rather, ORBCOMM was criticizing the NPRM's attempted use of a Structure-

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[10/] Although ORBCOMM does not disagree with another of Leo One's factual assertions in its reply comments -- new entrants would have to incur additional costs that would not be borne by ORBCOMM if its modification were granted (Leo One Reply Comments at p. 20) -- ORBCOMM disagrees with the conclusion Leo One attempts to draw from those facts. ORBCOMM will be able to take advantage of scale and scope economies; the fact that Leo One will not enjoy such economies does not demonstrate a valid public interest benefit of denying current licensees from obtaining access to additional spectrum.

[11/] AAR Reply Comments at p. 8, quoting ORBCOMM's Comments at p. 28.

Conduct-Performance model because of the absence of empirical data. One such input is demand elasticity, and ORBCOMM remarked:

> Thus, any attempt to calculate elasticities of supply and demand would be strictly a hypothetical exercise driven solely by projections or assumptions, and consequently of little real value.[12/]

ORBCOMM does not share AAR's opinion with regard to the need for additional spectrum for NVNG satellite services, but instead shares the common view of all of the Little LEO applicants and licensees that the record in the WRC proceedings supports such an additional allocation.

Sincerely,

Stephen L. Goodman
Counsel for ORBCOMM

cc: William Caton
Ruth Milkman
Tom Tycz
Cecily Holiday
Fern Jarmulnek
Paula Ford
Parties of Record

12/ ORBCOMM Comments at p. 28. Indeed, ORBCOMM earlier on that same page also indicated with respect to the SCP model:

> Where, as here, there is no empirical evidence, but only forecasts, speculation and assumptions with regard to structure, conduct and performance, the results are strictly the result of a hypothetical analysis that will be driven solely by the input and assumptions of the modeler. Any outcome can be produced by simply adjusting the inputs to the paradigm, because there is no real-world Little LEO full constellation experience to suggest what the inputs to the analysis actually should be.

ORBCOMM Constellation Coverage Statistics